

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
FORT WORTH DIVISION**

**SARAH SMART  
Plaintiff,**

**v.**

**WAL-MART, INC. AND WAL-MART  
STORES INC.  
Defendant.**

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**4:21-cv-423**

**PLAINTIFF'S ORIGINAL COMPLAINT**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW SARAH SMART, hereinafter called Plaintiff, complaining of and about WAL-MART, INC. AND WAL-MART STORES, INC., hereinafter called Defendant, and for cause of action shows unto the Court the following:

**I. PARTIES AND SERVICE**

1. Plaintiff, SARAH SMART, is an individual who is a citizen the State of Texas. The last three digits of the Plaintiff's driver's license number are 667. The last three digits of the social security number for the Plaintiff are 572.

2. Defendant, WAL-MART, INC., a company doing business in Texas, located at 4101 SH 121, Bedford, TX 76021. Defendant may be served with process by serving its registered agent: C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201. Service of said Defendant as described above may be perfected by personal delivery or certified mail.

3. Defendant, WAL-MART STORES, INC., a company doing business in Texas, located at 4101 SH 121, Bedford, TX 76021. Defendant may be served with process by serving its

registered agent: C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201. Service of said Defendant as described above may be perfected by personal delivery or certified mail.

## **II. JURISDICTION AND VENUE**

4. This is diversity of citizenship case under 28 U.S.C. § 1332. Plaintiff is a citizen of Texas suing a company located in another state, Arkansas, and the amount in controversy is more than \$75,000, not counting interest and costs of court.

Wal-Mart Stores, Inc. is a Delaware Corporation with its principal place of business in Arkansas. The Fifth Circuit has also previously recognized Wal-Mart Stores Inc. is a citizen of Delaware with its principal place of business in Arkansas. *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880 (5th Cir.2000). Wal-Mart Stores Texas, LLC is a Delaware Limited Liability Company with its principal place of business in Arkansas. Accordingly, for diversity purposes, Wal-Mart is a citizen of Delaware or Arkansas.

5. Venue is proper in this district under 28 U.S.C. § 1402(b) because Plaintiff resides in this district and the act or omission complained of occurred in this district.

## **III. FACTS**

6. At all times material hereto, Defendant, WAL-MART, INC., was the owner/operator of the premises located at 4104 SH 121, Bedford, TX 76021.

7. On or about July 10, 2019, Plaintiff entered upon said premises as an invitee for the purpose of shopping. During the time that Plaintiff was upon Defendants' property Plaintiff was seriously injured as a result of a dangerous condition that existed, specifically, Plaintiff slipped and fell in a puddle of water on the floor that came from leaks in the ceiling. Plaintiff's

incident was as a result of the unsafe condition of the floor, which was the proximate cause of the damages and injuries complained of in this petition in which Defendants', knew or, in the exercise of ordinary care, should have known existed.

**IV. LIABILITY OF DEFENDANTS**

**COUNT 1: PREMISES LIABILITY**

8. At all times mentioned herein, Defendants', WAL-MART, INC. AND WAL-MART STORES, INC., owned/operated the property in question located at 4104 SH 121, Bedford, TX 76021

9. At all times mentioned herein, Defendants', WAL-MART, INC. AND WAL-MART STORES, INC., had such control over the premises in question that Defendants', WAL-MART, INC. AND WAL-MART STORES, INC., owed certain duties to Plaintiff, the breach of which proximately caused the injuries set forth herein.

10. Defendants', WAL-MART, INC AND WAL-MART STORES, INC., Defendants' agents, servants, and employees negligently permitted the floor to become dangerous, negligently or willfully allowed such condition to continue and negligently or willfully failed to warn Plaintiff of the condition of the floor. This condition existed despite the fact that Defendants', WAL-MART, INC. AND WAL-MART STORES, INC., or Defendants' agents knew or should have known of the existence of the aforementioned condition and that there was likelihood of a person being injured as occurred to Plaintiff.

11. Furthermore, Plaintiff would show the court that the condition of the floor had continued for such period that had Defendants', WAL-MART, INC. AND WAL-MART STORES, INC., or Defendants' agents exercised ordinary care in the maintenance of the floor, it would have been noticed and corrected by such persons.

12. At all times pertinent herein, Defendants', WAL-MART, INC. AND WAL-MART STORES, INC., and any of Defendants' agents, who were acting in the scope of their employment, were guilty of negligent conduct toward the Plaintiff in:

- A. Failing to properly inspect and maintain the floor to discover the dangerous condition;
- B. Failing to give adequate and understandable warnings to Plaintiff of the unsafe condition of the floor;
- C. Failing to give warnings to Plaintiff of the unsafe condition; and
- D. Failing to discover and repair the condition of the floor.

**V. DAMAGES FOR PLAINTIFF**

13. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff, SARAH SMART, was caused to suffer severe bodily injuries and to incur some or all of the following damages:

- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff, SARAH SMART, for the necessary care and treatment of the injuries resulting from the incident complained of herein and such charges are reasonable and were usual and customary charges for such services in Dallas County, Texas;
- B. Reasonable and necessary medical care and expenses which will in all reasonable probability be incurred in the future;
- C. Physical pain and suffering in the past and future;
- D. Impairment in the past and future;
- E. Mental anguish in the past and future;
- F. Disfigurement;
- G. Lost wages past and future; and,
- H. Loss of earning capacity past and future.

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff respectfully asks that the Defendants' be cited to appear and answer and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for the following damages:

- a) Physical pain in the past and future;
- b) Mental anguish in the past and future;
- c) Disfigurement in the past and future;
- d) Physical impairment in the past and future;
- e) Medical expenses in the past and future;
- f) Loss of earning capacity in the past and future;
- g) Lost wages;
- h) Costs of suit;
- i) Prejudgment and post-judgment interest;
- j) All other and further relief, in law and in equity, to which Plaintiff may be entitled.

Respectfully submitted,

By: /s/ William Forteith  
William A. Forteith  
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**ATTORNEYS FOR PLAINTIFF**